

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF	:	
TOWN OF HOPKINTON	:	
-AND-	:	CASE NO: EE- 3623
RI COUNCIL 94, AFSCME, AFL-CIO	:	Unit Clarification:
	:	Finance Director

**DECISION AND ORDER**

**TRAVEL OF CASE**

The above-entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter "Board") on a Request for Accretion (hereinafter "Petition") for the position of Finance Director currently held by Janice Bergeron. The Petition was filed with the Board by RI Council 94, AFSCME, AFL-CIO, Local 3163 (hereinafter "Union") on July 5, 2005. On September 21, 2005 an informal hearing was held with representatives of the Union and the Employer, pursuant to R.I.G.L. 28-7-9 (b) (5).

The Board's Administrator and Investigative Agent conducted a subsequent investigation on the request. Upon completion of this investigation, they filed an investigative report with the Board and on June 13, 2006 provided a copy of the same to the parties. A formal hearing was held on October 24, 2006. Representatives from the Employer and Union participated and were provided a full and fair opportunity to examine and cross-examine witnesses and to submit appropriate documentary evidence.

**DISCUSSION**

The position sought by the Union in this accretion petition is that of Finance Director, held by Janice Bergeron. The record established that the Union was certified on July 18, 2000 to represent certain employees employed by the Town of Hopkinton, including: Tax Assessor, Town Planner, Director of Parks and Recreation, Building and Zoning Inspector and Tax Collector. In May 2003, the Town created the position of Accountant/ Sr. Bookkeeper and hired Janice

Bergeron to the position. The position of Accountant/ Sr. Bookkeeper was subsequently included as a part of the Union's bargaining unit. In July 2004, the Employer's taxpayers eliminated the elected (non bargaining unit) position of Town Treasurer. The Town Manager then created the position of Finance Director, which was intended to combine the duties of the Town Treasurer and the Accountant/ Sr. Bookkeeper into one position. According to the Employer, Ms. Bergeron applied for, and was then hired into, the position of Finance Director by the Town Manager. Ms. Bergeron's former position of Accountant/ Sr. Bookkeeper was technically eliminated, but she continued to perform all of her prior duties, as well as several new duties, in her new position. The position of Finance Director was not posted as a Union position. The new position of Finance Director was filled at an annual salary of \$50,000.00, which is several thousand dollars higher than that of other members of the existing bargaining unit.

The Union argued to the Board that the position of Finance Director shares a community of interest with the other positions of this bargaining unit. The Union also argued that the position of Finance Director could not be excluded from collective bargaining as either supervisory or confidential, as Rhode Island labor law defines those terms. The Union also essentially argues that the position of Finance Director and Accountant/Sr. Bookkeeper are essentially the same position, with a different title.

The Employer argued that not only does the position of Finance Director not share a "community of interest" with the proposed bargaining, unit but that the position is excluded from collective bargaining as a "confidential" employee- although the Town's argument actually centered on potential "conflicts of interest."

The Board's investigative agent found the question in this case to be a close one and deferred any recommendation, except that the Board, prior to any preliminary determination being made, should hear the matter formally.

## SUMMARY OF TESTIMONY

The Union presented the testimony of its Business Agent, Joseph Peckham. The Union also called Janice Bergeron, the Finance Director, as an adverse witness. Ms. Bergeron testified that in her position as Finance Director she continues to perform essentially all of the functions that she performed when she held the position of Accountant/ Sr. Bookkeeper. (TR. p. 21, lines 18-24 and p. 22, lines 1-2) She also testified that she absorbed the duties of the Town Treasurer because that position had been phased out under the Town's new Home Rule Charter. These new duties included more interfacing with state and local organizations, banks, insurance companies, unions and taxpayers.<sup>1</sup> Ms. Bergeron testified that she became more involved with the policies and procedures of the Town. (TR. p. 32, lines 14-18) She testified that she also oversees the cash flow of fifty million dollars, in and out of the various departments and town entities. (TR. p. 32, lines 19-24) She stated that in her new position, she has a lot more responsibilities regarding the development and production of the Town's annual budget attending the Financial Town Meeting and advising the Town Council and Manager on the budget and making recommendations on how to keep town expenses under the state mandated cap. (TR. p. 33, lines 5-13) She also testified that in the event that the Town was to borrow money and undertake a bonding process, she would have a role in that process. (TR. p. 33, lines 14-21).

Ms. Bergeron testified that her salary, when she held the position of Accountant/ Sr. Bookkeeper, was approximately \$43,000.00 to \$44, 000.00 and that her starting salary as Finance Director was \$50,000.00. (TR. p. 34, lines 8-16) She testified that her new position required her to hold an advanced educational degree. (TR. p. 34, lines 17-22) Her office is located in a municipal building known as Thayer House, which also houses the Planning Department. (TR. p. 35, lines 19-22) Ms. Bergeron testified that in her capacity as Finance Director and at the request of the Town Manager, she "sat at the table" for the police union contract and that until the petitioning union herein (Local 3163)

---

<sup>1</sup> The Finance Director's employment contract, which spells out the position's terms and conditions of employment, was entered as Employer's Exhibit #1.

objected, she sat at the table for some of the negotiations for its contract. (TR. p. 39, lines 2-7) She testified that she has made suggestions to the Town Manager relative to union negotiations. (TR. p. 39, lines 12-16) In support of that testimony, the Employer entered its Exhibit #2; a fax dated July 29, 2005 from Ms. Bergeron to the Town Solicitor, a "health care co-pay analysis." Ms. Bergeron testified that she performed this work at the "request of management." (TR. p. 40, lines 13-14) Ms. Bergeron also testified that in September 2005, she performed some calculations pertaining to sick leave calculations for the police union proposals. (TR. p. 42, lines 3-5) Also, see Employer's Exhibit #3. She has also prepared spreadsheets concerning benefits for the petitioning Union. (Employer's Exhibit #4) She testified that she has also prepared financial calculations relative to a grievance dispute concerning the calculation of longevity; and was also involved in preparing multiple "settlement packages" in regards to a dispute concerning an injured-on-duty claim. (TR. p. 45- 46 and TR. p. 48)

On direct examination, Ms. Bergeron testified that she "supervises" the work of one accounting clerk and if there is something wrong, Ms. Bergeron tells the clerk. Ms. Bergeron stated that there may be an occasion when something new comes along and she [Bergeron] will be required to set up a new policy or procedure, which she then relays to the clerk. (TR. p. 49, lines 15-21) In the event that the clerk was not performing her duties properly, Ms. Bergeron would speak to he about it and resolve it verbally. (TR. p. 50, lines 1-4)

During budget season, Ms. Bergeron's office is responsible for gathering budget request from the various departments and assembling the information into the budget. (TR. p. 51, lines, 9-13) Ms. Bergeron's office monitors revenues and reported expenses, cash collections, and the recording thereof. Her office also monitors all assets purchased by the various departments. (TR. p. 51, lines 11-12) If purchases are expected to exceed \$5,000.00, Ms. Bergeron makes sure the departments go out to bid for those items. (TR. p. 52, lines 1-5)

On cross-examination, Ms. Bergeron testified that she worked forty (40) hours per week in her former position of Accountant/ Sr. Bookkeeper and that

there was sufficient work to keep her busy. (TR. p. 56, lines 1-8) She also indicated that other than her required hours of work, her benefit package was the same as the members of the petitioning bargaining unit. (TR. p. 56, line 24 and p. 57, lines 1-6) She also indicated that approximately sixty percent (60%) of her work-week is spent doing typical accounting work. (TR. p. 59, lines 18-23) She acknowledged that the costing out of contract proposals is strictly an accounting function. (TR. p. 61, lines 12-18) She also acknowledged that she has no authority to issue discipline; that she would need to request the same from the Town Manager. (TR. p. 61, lines 19-23)

Upon further examination by the Employer, Ms. Bergeron testified that she was asked, prior to contract negotiations, to prepare spreadsheets so that management would have an idea as to what to "put on the table." (TR. p. 62, lines 22-24 and p. 63, lines 1-3) She testified that when she worked as Accountant/ Sr. Bookkeeper, she had not ever been asked to prepare spreadsheets. (TR. p. 62, line 24 and p. 64, lines 1-4) She also acknowledged that except for the Police Union, which has a "more deluxe" blue cross plan, that full-time Town employees enjoy the same benefits. (TR. p. 63, lines 8-18)

### **DISCUSSION**

The first issue that the Board will review is whether the position of Finance Director shall be excluded as a confidential employee. In Barrington School Committee v. Rhode Island State Labor Relations Board, 694 A.2d 1185 (R.I. 1992) the Rhode Island Supreme Court considered the question of what employees qualify as "confidential" and held:

"Two categories of employees are recognized as confidential under the test and are therefore excluded from collective bargaining. The first category comprises those confidential employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. ... The second category consists of employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. (Barrington at p. 1136, quoting NLRB v. Hendricks County Rural Electric Membership Corp, 454 U.S. 170 at 189)

This two-prong test of confidentiality is commonly referred to as the "labor-nexus" test. In this case, the Board finds the record devoid of any evidence relative to the first prong of the "labor-nexus" test. However, as to the second prong of the test, there was extensive testimony and documentary evidence submitted by the Employer, in its effort to establish the position as confidential. At first blush, the evidence would seem to support a finding that the position is confidential. However, upon a closer examination, that conclusion is not so inescapable. The labeling of Employer's Exhibits #2 thru #4 as "confidential" is not conclusive as to the confidentiality under the labor nexus test. The documents themselves are simply a mathematical analysis costing out the impact of various proposals. None of these calculations are confidential in and of themselves. The "recommendations" made by the Finance Director, after running these calculations consists of recommending the least costly alternative to the town. The Board doesn't find that position surprising or confidential. In fact, these mathematical exercises are simply documentary manifestations of the basics in budgeting for employee expenses. There is nothing in these documents to suggest any confidential "strategies"; indeed these types of calculations are usually performed as basic preliminaries on both sides of the collective bargaining table. In the Board's opinion, the performance of these types of calculations is purely accounting exercises, which according to Mr. Bergeron's testimony, consists of dropping figures into excel spreadsheets.

The Board would note that the Employer's advertisement for this position makes no mention of the Town's intent for either union or non-union status or any indication that the position is considered either "managerial or confidential." Moreover, Ms. Bergeron's employment contract similarly fails to reference this position as either managerial, confidential, or otherwise illegible for inclusion within a bargaining unit.

The testimony indicated that although Ms. Bergeron was invited by the Town Manager to "sit at the table" during contract negotiations for the police union and this bargaining unit, when this Union complained, the Town removed

her from the table.<sup>2</sup> Ms. Bergeron did not testify that she did anything other than “sit” at the table during these sessions. There was no testimony that she participated in any strategy sessions with management or that she was entrusted with any confidential information pertaining to anticipated changes, which may result from collective bargaining negotiations. Indeed, Ms. Bergeron’s own testimony indicated that her role was to provide “unbiased” financial information to management. (TR. p. 23, lines 18-24) The testimony indicated that her participation in the collective bargaining process was limited to “running the numbers” in computer programs. In the one instance that she made a “recommendation” for the police union’s health care co-pay, it was to suggest the least costly alternative for the town. However, more than a year after that recommendation, Ms. Bergeron was not privy as to the results of that “recommendation”.

Therefore, based upon the foregoing facts, the board finds that Ms. Bergeron’s role in costing out proposals and her role in “sitting at the table” for the police contract does not rise to the level of confidentiality as contemplated by the second prong of the labor nexus test.<sup>3</sup>

The Employer also argued that Ms. Bergeron’s position is excludable from collective bargaining as “supervisory.” In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 1189 (R.I. 1997), the Rhode Island Supreme Court adopted the following federal definition of “supervisor”:

“any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” (29 U.S.C. § 152(11))

Under federal law, this list of supervisory functions has been determined to be disjunctive; that is, a supervisor is an individual with the authority to undertake

---

<sup>2</sup> Ms. Bergeron also acknowledged that the new Town Manager may not allow her to sit it on negotiations. (TR. p. 26, lines 2-7)

<sup>3</sup> It should also be noted that contract negotiations incur only infrequently, not regularly, and that neither the job description nor the employment contract indicate any degree of confidentiality for this position.

any one of these functions. *Rest Haven Living Center, Inc.*, 322 NLRB 33, 150 LRRM 1132 (1996).

Ms. Bergeron testified that she does not supervise employees, only their work. (TR. p. 24, lines 13-19) She also readily acknowledged that she has no role in hiring, firing, or disciplining of other employees. (TR. p. 22, lines 15-18) Likewise, she has no authority to adjust grievances. (TR. p. 22, lines 19-22) Based upon these facts, the Board finds that the position of Finance Director is not supervisory.

Having found that the position of Finance Director is not excluded from participating in collective bargaining, the Board will now examine whether the position shares a "community of interest" with the proposed bargaining unit.

Factors to determine whether a community of interest exists are:

- 1) Similarity in scale and manner of determining earnings;
- 2) Similarity of employment benefits, hours of work, and other terms and conditions of employment;
- 3) Similarity in the kind of work performed;
- 4) Similarity in the qualifications, skills and training of the employees;
- 5) Frequency of contact or interchange among employees Similarity in the kind of work performed;
- 6) Geographic proximity;
- 7) Continuity or integration of the production process;
- 8) Common supervision and determination of labor relations policy;
- 9) Relationship to the administrative organization of the employer;
- 10) History of collective bargaining;
- 11) Desires of the affected employees;
- 12) Extent of union organization.

N.L.R.B. v. Saint Francis College, 562 F.2d 246, 249 (3d Cir. 1977) (citing Robert A. Gorman, *Basic Text on Labor Law, Unionization, and Collective Bargaining*, 69 (1976)) Rhode Island Public Telecommunications Authority v Rhode Island State Labor Relations Board, 650 A2d 479. Therefore, each of the contested positions must be examined to determine whether or not they share a "community of interest" with each other. The burden of establishing the "community of interest" is on the Petitioner.

In this case, the record reflects that the benefits accorded to the position of Finance Director, to wit, vacation, sick, retirement and pension, holidays and working conditions shall be those as applied to other employees of the town. (Employer's Exhibit #1 Section 15 B.) The position specifically receives the same sick leave and severance pay and holidays afforded to members of Local 3163.

(See Employer's Exhibit #1, Sections 4 A and Section 10) The Employer argued that the Finance Director's hours of work and salary schedule were so divergent from that of the bargaining unit that there was no community of interest. The evidence indicated that the regular number of work hours for the position, according to the employment contract, is forty (40), with compensatory time (at a straight time rate) for hours exceeding forty-five (45) hours. Ms. Bergeron indicated that she perceived her number of regular hours as forty-five (45) and that she often exceeds this number and receives some compensatory time off. The employment contract indicates that the intent for this position is to work "the same as the regular day shift of most Town office personnel." Therefore, the Board finds that the fact that Ms. Bergeron has regularly exceeded the intended work-hours is not grounds to find that the position does not share a community of interest, especially because the difference in number of hours is so small.

The Town also argued that the difference in salary between this position (\$50,000.00) and that of the other department heads (\$42,000.00) was sufficient to warrant a finding of no community of interest. The Board does not agree. While there is no question that this position required an advanced degree and paid seven to eight thousand dollars more than other positions, the record also reflects that the Planner also has an advanced degree and receives an educational stipend for the same. The record also indicates that recent negotiations included degree stipends for other department heads. Moreover, the existing salary difference at the time of hiring was not so much greater as to truly differentiate the position from other positions, since the difference is less than even twenty percent (20%). The evidence in the record further supports a community of interest in that the employees are all municipal office workers in a rural municipality, subject to the same Town Charter and all reporting to the Town Manager. The existing bargaining unit is a professional unit and the position of Finance Director is clearly a professional position. For all of the foregoing reasons, the Board finds a sufficient community of interest to allow this position to be accreted to the bargaining unit. Accretion is therefore, so ordered.

### FINDINGS OF FACT

- 1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and as such is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
- 3) The position of Finance Director was created in 2004 and is a combination of the position of Town Treasurer and Accountant/ Sr. Bookkeeper. The position of Finance Director is held by Janice Bergeron and was initially created with a starting salary of \$50,000.00.
- 4) The duties of the Finance Director include general ledger accounting, accounts payable and cash disbursements, accounts receivable and billing, payroll, investments, debt service functions and coordination of annual audit. Ms. Bergeron indicated that the duties also included interfacing with state and local organizations, banks, insurance companies, unions and taxpayers.
- 5) At the request of management, Ms. Bergeron has prepared financial spreadsheets regarding wage increases, health insurance premiums and degree stipends. All of these spreadsheets are basic accounting functions.
- 6) Ms. Bergeron did sit at the table during police union negotiations, but the evidence revealed that her function was to run financial analysis and present unbiased information.
- 7) Ms. Bergeron also sat at the table during one (1) or two (2) sessions of negotiations with Council 94, but was removed after the Union complained. There was no evidence in the record as to what role she was serving, if any, other than sitting at the table.
- 8) Ms. Bergeron does not supervise employees, only their work. Ms. Bergeron has no role in hiring, firing, or disciplining of other employees. Ms. Bergeron has no authority to adjust grievances.

- 9) The benefits accorded to the position of Finance Director, including vacation, sick, retirement and pension, holidays and working conditions are the same as other employees of the town. The position specifically receives the same sick leave and severance pay and holidays afforded to members of Local 3163.
- 10) Both Ms. Bergeron and the employees in the existing bargaining unit are all municipal office workers in a rural municipality, subject to the same Town Charter and all reporting to the same Town Manager.
- 11) The existing bargaining unit is a professional unit and the position of Finance Director is clearly a professional position.
- 12) The scale of wages is fairly similar between the bargaining unit and the position of Finance Director, with less than a twenty percent (20%) variation.

#### **CONCLUSIONS OF LAW**

- 1) The position of Finance Director, held by Janice C. Bergeron, does not act in a confidential capacity to any person that does have labor relations duties and is therefore, not a confidential position.
- 2) The position of Finance Director, held by Janice C. Bergeron, does not act in a supervisory capacity.
- 3) The position of Finance Director, held by Janice C. Bergeron, shares a community of interest with the other positions within the bargaining unit organized under EE-3623.

#### **ORDER**

- 1) The position of Finance Director, held by Janice C. Bergeron, shall be and is hereby accreted to the bargaining unit covered by EE-3623.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF  
TOWN OF HOPKINTON  
  
-AND-  
RI COUNCIL 94, AFSCME, AFL-CIO

CASE NO: EE- 3623  
Unit Clarification:  
Finance Director

**NOTICE OF RIGHT TO APPEAL AGENCY DECISION  
PURSUANT TO R.I.G.L. 42-35-12**

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of EE-3623 dated March 26, 2007, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after March 26, 2007.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: MARCH 26, 2007  
By: Robyn H. Golden  
Robyn H. Golden, Administrator

EE-3623

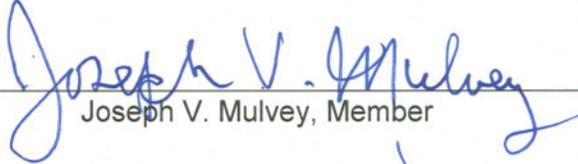
RHODE ISLAND STATE LABOR RELATIONS BOARD



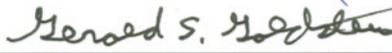
Walter J. Lanni, Chairman



Frank J. Montanaro, Member



Joseph V. Mulvey, Member



Gerald S. Goldstein, Member (Dissent)



Ellen L. Jordan, Member (Dissent)



John R. Capobianco, Member



Elizabeth S. Dolan, Member (Dissent)

Entered as an Order of the  
Rhode Island State Labor Relations Board

Dated: MARCH 26, 2007

By: Robyn H. Golden  
Robyn H. Golden, Administrator

EE-3623